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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: WAC 07 150 50321 Office: CALIFORNIA SERVICE CENTER Date: APR 16 2009

IN RE: Petitioner: [REDACTED]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom

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Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the preference visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5).

The director determined that the petitioner had failed to demonstrate a qualifying investment of lawfully obtained funds.

On appeal, counsel submits a brief and additional evidence. While counsel notes that the commercial enterprise has been recognized among the top 25 percent of home care providers in the United States, that recognition has no bearing on whether the petitioner has met the strict investment requirements set forth in section 203(b)(5) of the Act and pertinent regulations. We will consider counsel's assertions relating to the merits below.

Subsequently, counsel submits a copy of *Fred 26 Importers, Inc. v. U.S. DHS*, 445 F. Supp. 2d 1174 (C.D. Ca. 2006), in which the court found that U.S. Citizenship and Immigration Services (USCIS) failed to consider all of the evidence. Counsel asserts that the director similarly failed to consider all of the evidence when adjudicating the petition before us. We will consider all of the evidence submitted below. For the reasons discussed below, however, even if we accept that the petitioner has adequately documented all of the transfers claimed and that the funds transferred were contributed as equity, the petitioner has not demonstrated that all of the necessary funds were fully committed to the commercial enterprise as of the date of filing. Thus, we uphold the director's decision.

The 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), which amends portions of the statutory framework of the EB-5 Alien Entrepreneur program, was signed into law on November 2, 2002. Section 11036(a)(1)(B) of this law eliminates the requirement that the alien personally establish the new commercial enterprise. Section 11036(c) provides that the amendment shall apply to aliens having a pending petition. As the petition was filed after November 2, 2002, the petitioner need not demonstrate that he personally established a new commercial enterprise. The issue of whether the petitioner purchased a preexisting business is still relevant, however, as a petitioner must still demonstrate the creation of 10 new jobs.

Section 203(b)(5)(A) of the Act, as amended, provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent

residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The record indicates that the petition is based on an investment in a business, Sundance Home Health Care, Inc., not located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is \$1,000,000.

INVESTMENT OF CAPITAL

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part, that:

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.

* * *

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

The regulation at 8 C.F.R. § 204.6(j) states, in pertinent part, that:

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

- (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
- (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

- (iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
- (iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or
- (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

On the Form I-526 petition, the petitioner claimed to have made an initial investment of \$250,000 on August 29, 2005 and a total investment of \$410,000. The petitioner submitted two July 27, 2005 stock certificates issued to him for 4,000 shares each in Sundance Home Healthcare, Inc. Pursuant to a settlement agreement, [REDACTED] sold his 2,000 shares in Sundance Home Healthcare to the petitioner for \$100,000 to be paid by the company and the petitioner.

The petitioner submitted an August 24, 2005 official check whereby the petitioner transferred \$150,000 to '[REDACTED] (For Sundance Trust Account).' The deposit slip for this transfer describes the account as a client trust account. The petitioner also submitted several official checks payable to Sundance Home Healthcare, Inc.¹ While the petitioner is identified as the remitter on the checks, on some of them his name is merely handwritten on the check. The funds represented by the official checks issued to [REDACTED] client trust account and Sundance Home Healthcare, Inc. total \$510,000.

The petitioner also submitted an Asset Purchase Agreement dated August 22, 2005 whereby Sundance Home Healthcare purchased the assets, including the furniture, equipment, supply inventory and business records, for the home health care business of Autumn Ridge Home Health, Inc. for \$150,000. A Successorship Questionnaire completed by the petitioner indicates that the health care business was operational at the time of the purchase.

On October 1, 2007, the director issued a request for evidence. In this notice, the director acknowledged the submission of official checks, but noted that the petitioner had not submitted "corroborating evidence such as bank statements or other documentation to show that the funds were transferred from the petitioner's bank account and deposited into the enterprise bank account." The director requested a comprehensive list of all funds placed at risk cross-indexed with documentary

¹ These checks will be enumerated below.

evidence to substantiate these claims. The director further indicated that evidence of investment “may” include wire transfers, bank statements showing the withdrawal and deposit of funds and the front and back copies of checks written by the petitioner and deposited into the account of the commercial enterprise.

In response to the director’s request for additional evidence, the petitioner submitted an “Investment Analysis Chart” cross-referencing specific exhibits. The petitioner submitted bank statements for Sundance Home Healthcare documenting several deposits, to be enumerated below.

Further, the petitioner submitted additional official checks issued to Sundance Home Healthcare, Inc. The following charts lists all of the official checks issued prior to the date of filing as well as whether the record contains bank statements confirming the deposits with Sundance Home Healthcare, Inc. and the withdrawal from the petitioner’s personal funds:

<u>Amount</u>	<u>Date</u>	<u>Issuing Bank</u>	<u>Deposit</u>	<u>Withdrawal</u>
\$100,000	August 18, 2005	Standard Federal Bank	Yes	Yes
\$100,000	September 15, 2005	LaSalle Bank	No	Yes
\$10,000	March 10, 2006	Comerica Bank	Yes	No
\$10,000	March 24, 2006	Comerica Bank	Yes	No
\$25,000	April 6, 2006	Comerica Bank	Yes	No
\$10,000	May 19, 2006	Comerica Bank	Yes	No
\$40,000	June 2, 2006	Comerica Bank	Yes	No
\$40,000	July 14, 2006	Comerica Bank	Yes	No
\$10,000	September 8, 2006*	Comerica Bank	Yes	No
\$15,000	October 6, 2006*	Comerica Bank	Yes	No
\$25,000	March 23, 2007	Charter One Bank	No**	No†
\$35,000	April 4, 2007	Charter One Bank	Yes	Yes
\$35,000	April 4, 2007	Charter One Bank	No	No

* Specifically identified as a “loan to company.”

** This amount, however, was transferred to Sundance Home Healthcare, Inc.’s checking account from another business account on March 26, 2007.

† The March 2007 Charter One Bank account statement shows a \$70,000 outgoing wire transfer on that date, but the record contains no evidence that any of these funds were eventually used to purchase the \$35,000 official check.

Significantly, the August 2005 Comerica Bank business checking account statement also shows a \$150,000 check issued on August 24, 2005, the same date of the Comerica Bank official check for that amount issued to [REDACTED]. While the petitioner is listed as the remitter on that check, his name is only handwritten on the check. Thus, it is not clear that the \$150,000 represented by that check derived from the petitioner’s personal funds beyond the \$100,000 transferred to Sundance Home Healthcare on August 18, 2005. The Investment Analysis Chart acknowledges that [REDACTED] is the source of the additional \$100,000 deposited with Sundance Home Healthcare, Inc. on August 19, 2005.

In addition, the April 2007 business account statement reflects only a single deposit of \$35,000. Thus, the petitioner has not established that the other April 4, 2007 official check for \$35,000 was deposited with Sundance Home Healthcare, Inc. Moreover, a March through April statement for the petitioner's Charter One Bank checking account reflects only a single debit of \$35,000 on April 4, 2007.

The petitioner also submitted official checks and personal and business bank statements reflecting the following transfers to Sundance Home Healthcare, Inc. after the date of filing:

\$22,000	April 30, 2007
\$22,000	May 29, 2007
\$21,000	July 5, 2007

A final official check for \$21,000 was issued by Sundance Home Healthcare to _____ on July 6, 2007.

The petitioner also submitted a new business plan projecting an investment of \$1,000,000 by the end of 2009. A balance sheet reflects the following projections for the end of the following years:

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Cash (all accounts)	\$29,000	\$71,750	\$364,750
Fixed Assets	\$100,000	\$165,000	\$235,000
Stock	\$1,500	\$1,500	\$1,500
Additional Paid-in-Capital	\$328,000	\$400,000	\$650,000
Retained Earnings and Net income	\$213,944.15	\$323,257.74	\$509,012.96

Finally, the petitioner also submitted the 2006 Internal Revenue Service (IRS) Form 1120S U.S. Income Tax Return for an S Corporation for Sundance Home Health Care, Inc. This return, Schedule L, reflects capital stock increasing from \$345,000 to \$445,225 during 2006. Schedule L also reflects a year-end balance of \$128,086 in shareholder loans.

The director concluded that the petitioner had not traced sufficient funds from his own account to Sundance Home Healthcare, Inc., that he had not demonstrated that he had invested "or was actively in the process of investing" the full \$1,000,000 and that the petitioner had not demonstrated that the funds contributed to the new commercial enterprise were contributed as equity.

On appeal, counsel asserts that the petitioner submitted the commercial enterprise's 2006 tax return showing the contributed funds as equity, that the director ignored the investment analysis chart and that the petitioner need only be in the process of investing the full \$1,000,000.

First, we acknowledge that the 2006 tax return reflects \$445,225 in shareholder equity in addition to the \$128,086 in shareholder loans. Thus, we withdraw the director's concern that the petitioner did not provide evidence documenting whether the funds transferred to the commercial enterprise were

contributed as equity. The \$128,086 in shareholder loans, however, cannot be considered as part of the petitioner's at-risk investment. 8 C.F.R. § 204.6(e) (definition of "invest" excludes debt arrangements with the new commercial enterprise).

The remaining issues to be discussed are whether the petitioner has provided sufficient transactional evidence of his investment and whether he has complied with the regulatory requirements for being actively in the process of investing the full \$1,000,000.

As discussed above, the record includes official checks predating the filing of the petition and not labeled as loans as well as bank statements confirming the deposits of \$100,000 on August 18, 2005, \$10,000 on March 10, 2006, \$10,000 on March 24, 2006, \$25,000 on April 6, 2006, \$10,000 on May 19, 2006, \$40,000 on June 2, 2006, \$40,000 on July 14, 2006, \$25,000 on March 23, 2007 and \$35,000 on April 4, 2007. The petitioner also submitted personal bank statements confirming that his personal account was debited \$100,000 on August 18, 2005, \$100,000 on September 15, 2005 and \$35,000 on April 4, 2007. The record does not contain personal statements confirming any other debits, which is of concern because the petitioner's Charter One Bank statement for March and April 2007 does not include a withdrawal of \$25,000 on March 23, 2007² to correspond with the official bank check from that bank. The amounts documented as deposited with Sundance Home Healthcare as of the filing date of the petition, April 24, 2007, total \$295,000. Even if we total all of the official checks issued to Sundance Home Healthcare, Inc. that do not specify that they are loans and are dated prior to April 24, 2007, those checks total \$430,000.

Regarding the official check for \$150,000 issued to [REDACTED], as stated above, the only withdrawal for \$150,000 is from Sundance Home Healthcare, Inc.'s account on the same date and from the same bank as the official check issued to [REDACTED]. Thus, the petitioner has not demonstrated that these funds are in addition to the \$100,000 he had just transferred to Sundance Home Healthcare, Inc. While the debit from Sundance Home Healthcare, Inc. included an extra \$50,000, we note that [REDACTED] contributed another \$100,000 to Sundance Home Healthcare, Inc. in August 2005.³ Thus, we are not persuaded that the petitioner contributed any funds toward the official check issued to [REDACTED] beyond the \$100,000 he transferred to Sundance Home Healthcare, Inc. on August 18, 2005, deposited the following day. Even if we added those funds to the \$430,000 deposited with Sundance Home Healthcare, Inc. as of the date of filing, the total investment would amount to only \$580,000.

Finally, the petitioner only demonstrated contributions of an additional \$65,000 to Sundance Home Healthcare, Inc. after the date of filing, bringing the total maximum investment to \$645,000. Thus, the petitioner must demonstrate that he met the regulatory requirements for being actively in the process of investing the remaining \$355,000.

² Assuming the \$25,000 transferred to the company's checking account from another business account on March 26, 2007 represents the same \$25,000 reflected on the official check.

³ As will be discussed below, the petitioner received \$150,000 in loans prior to August 24, 2005. The Sundance Home Healthcare, Inc. August 2005 bank statement, however, reflects an opening balance of \$0 and only the August 19, 2005 deposits of \$100,000 from the petitioner and [REDACTED] prior to the issuance of the \$150,000 check.

As stated above, counsel asserts that the petitioner need only demonstrate that he was actively in the process of investing \$1,000,000 as of the date of filing. The regulation at 8 C.F.R. § 204.5(j)(2) provides that the petitioner must demonstrate that he has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. *Id.* The alien must show actual commitment of the required amount of capital. *Id.*; see also *Matter of Hsiung*, 22 I&N Dec. 201, 204 (Comm'r. 1998).

Even if we ignore the lack of evidence that all of the deposits represent funds debited from the petitioner's accounts and the evidence that the \$150,000 transferred to [REDACTED] was not in addition to the \$100,000 previously transferred to the commercial enterprise, the petitioner has not demonstrated that the remaining \$355,000 is fully committed to the new commercial enterprise. Specifically, the record lacks evidence that the petitioner has placed this amount in escrow or that he has executed a promissory note in behalf of Sundance Home Healthcare, Inc. that meets the requirements set forth in *Matter of Izummi*, 22 I&N Dec. 169, 191-94 (Comm'r. 1998) and *Matter of Hsiung*, 22 I&N Dec. at 202-04. Even a promissory note would not necessarily bind the petitioner to making future investments as he is currently the sole shareholder.

Significantly, the petitioner has not established that the business has any commitments that require an additional capital investment. Even the projected balance sheet shows fixed assets of only \$235,000 as of the end of 2009. Cash at that time would amount to \$364,750, more than the company's fixed assets, suggesting that the business would be grossly overcapitalized. Even these projections reflect a capital investment of only \$1,500 in stock and \$650,000 in additional paid-in-capital, for a total investment of \$651,500. The remaining equity results from retained earnings and net income.

Retained earnings and net income cannot be considered part of the petitioner's investment. As quoted above, according to 8 C.F.R. § 204.6(e), "invest" means to "contribute" capital. The common meaning of "contribute" is "to give or supply." Webster's New College Dictionary 251 (3rd ed. 2008). None of the various definitions for "contribute" include a failure to remove funds. *Id.*

The regulation at 8 C.F.R. § 204.6(j)(2) includes a list of the types of evidence required to demonstrate the necessary investment, which does not include evidence of the reinvestment of the proceeds of the new enterprise. While the list is not exclusive, a review of the examples makes clear that the regulations contemplate an infusion of new capital into the new commercial enterprise, and not simply the gradual growth of a company.

The USCIS interpretation that an investment may not include the reinvestment of proceeds is not a new one and has been twice tested in federal court. See generally *Kenkhuis v. INS*, 2003 WL 22124059 (N.D. Tex. Mar. 7, 2003); *De Jong v. INS*, 1997 WL 33765206 (E.D. Tex. Jan. 17,

1997). We also note that *Matter of Izummi*, 22 I&N Dec. at 195 provides that corporate earnings cannot be considered the earnings of the petitioner even if he is a shareholder of the corporation.

We acknowledge that the district court decisions on which the director relied are unpublished district court decisions and, therefore, are not binding on us. *See Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993). The reasoning underlying a district judge's decision, however, will be given due consideration. *Id.* at 719.

Significantly, *Kenkhuis*, 2003 WL 22124059, upheld our interpretation of "invest" as applied to a sole proprietorship. The court stated:

The AAO's construction is consistent with an everyday usage of "invest," meaning to put money or capital into a venture. [Footnote citing *Mirriam-Webster Online* omitted.] It is also consistent with the legislative history indicating the purpose of the EB-5 program is to encourage infusions of new capital in order to create jobs. The Senate Report on the legislation twice refers to investments of "new capital" that will promote job growth. S. Rep. 55, 101st Cong. 1st Sess. 5, 21 (1989). [Footnote providing some of that report omitted.] The AAO's construction is also consistent with the remarks of Sen. Simon in the floor debate on the statute. [Footnote quoting those remarks omitted.] Finally, as the AAO noted, *Kenkhuis'* contrary construction would permit the accretion of capital over years; that would be contrary to the legislative intent that the job creation resulting from the infusion of capital take place within a reasonable time, in most cases not longer than six months.

Id. at *3.

As this decision notes, the repeated use of the phrase "new capital" in the legislative history suggests that the legislative history reveals a preference for new capital over reinvested proceeds that slowly grow a business.

As we will not include reinvested proceeds in the form of retained earnings, the projected capital investment as of December 31, 2009 would only amount to \$651,500, far less than the \$1,000,000 required. Thus, the petitioner has not even demonstrated an intent to invest the full \$1,000,000. Moreover, much of the \$651,500 would not be at risk because the balance sheet projection for December 31, 2009 shows fixed assets of only \$235,000 and a larger amount remaining in cash likely to be passively invested with no nexus to the job creating activities of Sundance Home Healthcare, Inc.

In light of the above, we uphold the director's findings that the petitioner has not established that he was or even is actively in the process of contributing \$1,000,000 as an at-risk investment.

SOURCE OF FUNDS

The regulation at 8 C.F.R. § 204.6(j) states, in pertinent part, that:

(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. 206, 210-211 (Comm'r. 1998); *Matter of Izummi*, 22 I&N Dec. at 195. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. *Id.* An unsupported letter indicating the number and value of shares of capital stock held by the petitioner in a foreign business is also insufficient documentation of source of funds. *Matter of Ho*, 22 I&N Dec. at 211. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

Initially, the petitioner submitted an affidavit from [REDACTED], Chief Executive of Tower Associates in Lahore, Pakistan, asserting that the petitioner inherited 100 acres of land and an interest in Texel Shoes, which provides 1,700,000 Pakistani Rupees per year as income. [REDACTED] further asserts that the petitioner has a real estate and development business, Tower Associates,

having invested more than 40,000,000 Pakistani Rupees in this business. Finally, [REDACTED] affirms that the petitioner is a director of Tower Associates, drawing a salary of 1,000,000 Pakistani Rupees per year in this position.

The petitioner also submitted a letter from Muslim Commercial Bank confirming transfers by Mrs. [REDACTED] Javed of \$20,000 on May 13, 2004 to the petitioner's Citizens Bank account, \$20,000 on August 7, 2004 to the same account and \$19,885 on April 2, 2005 to the petitioner's Standard Federal Bank account. The petitioner also submitted U.S. bank statements documenting these deposits and an additional \$39,960 on September 17, 2004, \$15,960 on December 2, 2004, \$39,745 on May 31, 2005 and \$9,860 on June 21, 2005. The petitioner also documented the transfer of \$164,970 from [REDACTED] Commercial Phase III Defense Housing Authority, to the petitioner's Comerica Bank account on June 26, 2006. In addition, the record demonstrates that [REDACTED] transferred \$69,079 to the petitioner's LaSalle Bank account on March 27, 2007. Thus, the total funds transferred to the petitioner during this period amounted to \$399,459.

The director requested documentation tracing all sources and origins of the invested funds and business or personal tax income tax returns from all jurisdictions prior to the date of investment.

In response, the petitioner submitted the following promissory notes, all having small monthly payments over five years with a final balloon payment:

<u>Date</u>	<u>Amount</u>	<u>Lender</u>
May 4, 2005	\$50,000	[REDACTED]
August 18, 2005	\$100,000	[REDACTED]
September 15, 2006	\$50,000	[REDACTED]

The petitioner submitted two checks for \$50,000 each issued to him by [REDACTED] and [REDACTED]. The investment analysis chart asserts that these funds are the source of the \$100,000 transferred to Sundance Home Healthcare, Inc. on August 18, 2005 and, along with the \$100,000 contributed by [REDACTED] the source of the \$150,000 paid to [REDACTED]. Sundance Home Healthcare, Inc.'s August 2005 bank statement, however, shows only two deposits in August 2005, the \$100,000 from the petitioner and the \$100,000 from [REDACTED]. Sundance Home Healthcare, Inc. began August 2005 with a balance of \$0 and received only the \$100,000 from the petitioner and an additional \$100,000 from [REDACTED]. The statement does not show an additional deposit of \$50,000 from the petitioner or anyone else.

The chart indicates that the remaining contributions to Sundance Home Healthcare, Inc. derived from personal savings, wire transfers from Pakistan and "repayment of [a] personal loan." The petitioner submitted a new affidavit from [REDACTED] identifying himself as the petitioner's brother. [REDACTED] reaffirms that the petitioner owns property, has an interest in Texel Shoes and is a director of Tower Associates. [REDACTED] adds that he sold the petitioner's property in October 2006 and subsequently the shop, allowing him to transfer approximately \$165,000 and \$69,000 in proceeds to the petitioner. The petitioner submitted the conversion rate of .01643 for Pakistani Rupees and the

U.S. dollar. This rate is used to calculate the U.S. dollar amounts listed below. The petitioner also submitted a property evaluation, partnership deed for Tower Associates and Texel Shoes, a power of attorney document in favor of [REDACTED], a register of inherited property, a sale deed listing a purchase price of 11,500,000 Pakistani Rupees (\$188,945) and 2004 through 2006 Pakistani tax returns filed by the petitioner. The tax returns reflect income of 2,500,000 Pakistani Rupees (\$41,075), 2,900,000 Pakistani Rupees (\$47,647) and 3,200,000 Pakistani Rupees (\$52,576) respectively.

The director concluded that the petitioner had not established the lawful source of the \$250,000 loaned by [REDACTED] and [REDACTED]. On appeal, counsel asserted that the petitioner documented that the invested funds were obtained from the sale of the petitioner's assets in Pakistan.

We concur with the director that the petitioner has not provided even basic information or documentation to establish the source of the funds loaned to the petitioner. While the petitioner documented some Pakistani income and the proceeds from the sale of his home, the petitioner has not documented his relationship to the ultimate source of the transfers, [REDACTED] and [REDACTED]. Moreover, the funds earned in Pakistan cannot account for the accumulation of \$1,000,000 such that we can conclude that the petitioner will repay the loans to him with lawfully obtained funds or that he has the lawfully acquired funds to invest the remaining \$355,000 that has yet to be invested.

In light of the above, the petitioner has not documented the lawful accumulation of \$1,000,000 in fixed or liquid assets.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.